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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re AIDAN H., a Person
Coming Under the Juvenile
Court Law.

B290789
(Los Angeles County
Super. Ct. No.
18CCJP00352)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

STACY S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los
Angeles County, Stephen C. Marpet, Juvenile Court Referee.
Affirmed.

Liana Serobian, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and William D. Thetford, Principal
Deputy County Counsel, for Plaintiff and Respondent.

Stacy S. (Mother) appeals from the jurisdictional findings and dispositional orders removing then seven-year-old Aidan H. from her custody, releasing him to his father Jason H. (Father), and terminating dependency jurisdiction with a juvenile custody order granting Father sole legal and physical custody of Aidan and limiting Mother to monitored visitation. Mother does not contest jurisdiction based on her prior and continued alcohol abuse, but contends there is insufficient evidence to support the jurisdictional finding of her physical abuse of Aidan.

In addition, Mother challenges the removal order made pursuant to Welfare and Institutions Code¹ section 361, subdivision (c). We conclude the juvenile court erred in failing to state the facts for removal as required under section 361, subdivision (e). Although we are deeply troubled by the juvenile court's failure to make factual findings on the record supporting the removal of Aidan from Mother's custody, the error was harmless because it is not reasonably probable, had the juvenile court made factual findings in support of its removal order, the findings would have been in favor of continued parental custody. We understand juvenile court bench officers are increasingly incorporating dependency court order 415 into the court clerk's minute order to support removal of children under section 361,

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

subdivisions (c)(1) and (d), but this order is not a replacement for factual findings that explain the juvenile court's reasoning in removing the child from the parent, guardian, or Indian custodian. Bench officers' reliance on dependency court order 415 to support the removal order without making factual findings does not comply with the mandate in section 361, subdivision (e).

Mother also challenges termination of jurisdiction and the court's advisory statements in the juvenile custody order setting forth the services it would have required Mother to complete had it not terminated jurisdiction. We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. The Referral Investigation

On December 11, 2017 the Los Angeles County Department of Children and Family Services (the Department) received a referral alleging Mother neglected then six-year-old Aidan. Mother and Father were divorced and shared joint custody of Aidan. On December 9, 2017 Father asked law enforcement to conduct a welfare check on Aidan after Mother refused to tell Father where Aidan was that evening. Father reported that when he spoke with Mother, she was drunk at a party. No one was at Mother's home when law enforcement came to check on Aidan. According to Mother, she had sent Father an e-mail to inform him she was going to a holiday party, and Aidan was spending the night with his best friend, six-year-old Raquel, and Raquel's mother, Mariela V. Both Aidan and Mariela confirmed Aidan was at Mariela's home that night.

Father told social worker Maayan Kachlon that Mother had a drinking problem. According to Father, Mother used to drink

three bottles of wine a day for a year when they were together. Mother attended two inpatient 30-day treatment programs in November 2012 and January 2013 when Aiden was one year old. Father and Mother divorced in February 2013 because of Mother's alcohol abuse, and Father was granted full custody of Aidan for a year and a half. Mother gained joint custody of Aidan after she attended a dual diagnosis program and Alcoholics Anonymous meetings, and submitted to drug testing.

Father believed Mother was drinking alcohol again. He saw Mother purchase two boxes of white wine in February 2017. In addition, he reported Mother was intoxicated when she attended a parent/teacher night in August 2017. Aidan's teacher confirmed Mother seemed impaired and was slurring her words at the back-to-school event. But the teacher stated Mother was not impaired at two subsequent parent/teacher conferences.

Father admitted he used marijuana. He said he had a medical marijuana card. However, he did not use marijuana in Aidan's presence, and Aidan did not have access to the marijuana.

On January 16, 2018 Father contacted Kachlon to report Aidan had called him from Mariela's apartment the day before. Aidan told Father he was in the apartment with Raquel without any adults, and used his "safe word" during the call, meaning he felt unsafe. While Father was on the phone with police dispatch, Mother called him back and said Aidan was simply bored because she had the stomach flu. Father, his fiancée Melissa L., and two police officers went to Mother's residence, and Mother came outside with Aidan and Raquel. Melissa noticed redness on Aidan's cheek and asked him what happened to his face. He

answered, “Nothing.” Later that day, Father observed bruises on Aidan while getting him into the shower.

The same day Kachlon interviewed Aidan and his teacher at his school. Aidan’s teacher told Kachlon there was a light bruise on Aidan’s face, which was “barely visible, and some bruises on his legs.” Aidan told Kachlon he did not know how he got the bruises on his face and legs. When Melissa arrived and sat in on the interview, Aidan again said he did not know how he got the bruises, and thought he might have fallen onto something when he fell off a zip line at a children’s gym. Kachlon observed a bruise on Aidan’s left cheek, scratch marks and red dots on his left forearm, and a bruise on his left elbow.

Aidan initially denied knowing who had hurt him. But Aidan stated he was afraid that person was going to get in trouble, and he did not want to talk to the police about his bruises. Aidan got upset and began to cry, so Melissa took him outside. After they returned, Melissa told Kachlon that Aidan was now ready to tell the truth so that the police would not have to come. Aidan said he did something bad to Mother’s cat, and Mother got mad at him. Mother hit him with her hand, but that was the only time she had hit him. Aidan indicated Mother hit him on the face like “how you would give someone a high five.” Mother also scratched Aidan on his right forearm when she grabbed him as he tried to run away. He denied Mother hit him on his legs.

Kachlon took Aidan to the police station to file a police report. Aidan told two police officers he was chasing Mother’s cat around her apartment, and she told him to stop. When Mother grabbed him, she scratched his right arm with her fingernail. Aidan reported Mother was mad at him and hit him one time on

the left side of his face with her hand. The officers observed a red mark on Aidan's left cheek, multiple bruises on both his legs, and a small scratch and light-colored bruise on his right forearm. Aidan told the officers he did not know how he got the bruises on his legs. He loved Mother and Father and liked spending time with both parents. Aidan preferred being at Father's home because Melissa did not say "no" to him and bought him things.

B. The Petition and the Detention Hearing

On January 18, 2018 the Department filed a petition on behalf of Aidan pursuant to section 300, subdivisions (a), (b)(1), and (c). The petition alleged Mother physically abused Aidan by striking his face with her open hand and grabbing and scratching his arm (counts a-1 and b-1). The petition also alleged Mother had a history of alcohol abuse and abused alcohol, which rendered her incapable of caring for Aidan (count b-2). Further, the petition alleged Father used marijuana, which rendered him incapable of caring for Aidan (count b-3). In addition, the petition alleged Aidan was at substantial risk of emotional harm because Mother and Father subjected him to numerous interviews with social workers and law enforcement officers relating to possible abuse and custody matters (count c-1).

At the January 19, 2018 detention hearing, the juvenile court found a prima facie case to detain Aidan. The court released Aidan to the homes of Mother and Father under the existing family court custody order, with the Department making unannounced home visits. The court ordered Mother and Father to have weekly random drug and alcohol testing, individual and conjoint counseling, and coparenting classes.

C. *The Jurisdiction and Disposition Report*

The February 8, 2018 jurisdiction and disposition report summarized the interviews conducted by dependency investigator Nahid Rimi. Mother denied the allegations of physical abuse, stating, “I never laid [a] hand on my son” Mother reported Aidan was with her on January 15, 2018, and he and Raquel went back and forth between Mother’s apartment and Mariela’s apartment, which was in the same building. Mother did not observe any bruises on Aidan that day. Rimi asked Mother about the scratches on Aidan’s arm, and Mother responded, “[S]cratches would be from the cat, I got scratches from the cat.” Mother also denied she had an alcohol problem. She used to drink three glasses of wine a day, but it was five years earlier. Mother said she now drank only occasionally when she went out to dinner.

Aidan was reluctant to talk with Rimi about the allegations. He said he got bruises when he fell at the children’s gym. He denied Mother hit him with an open hand. According to Aidan, he said something different to Kachlon because “I did not want my dad, my mom, my step mom and [Kachlon] to get mad at me.” Aidan also said Mother drank her lemonade five times a day, and that he did not drink it. Aidan stated when Mother drinks the lemonade, “[s]he gets mad at me for no reason.”

Rimi recommended the juvenile court declare Aidan a dependent of the court. She recommended Aidan remain in the homes of Mother and Father under the existing family law arrangement, with the parents receiving family maintenance services. The family maintenance services would include weekly random and on-demand alcohol testing for Mother, random drug testing for Father, coparenting classes for Mother and Father,

and individual therapy for Mother to address alcohol abuse and other related case issues.

D. *The Department's Ex Parte Application and the Second Detention Hearing*

On February 13, 2018 the Department filed an ex parte application to remove Aidan from Mother's home pursuant to section 385 based on an allegation Mother burned Aidan with a cigarette. On February 7, 2018 Father and Melissa contacted Kachlon to report Aidan had a six-millimeter circular abrasion on his back. According to Melissa, Aidan told the pediatrician he fell on a cigarette on his way to Raquel's apartment.

That afternoon, Kachlon spoke with Aidan in private about the mark on his back. Aidan initially said he did not know how he got it. He later told Kachlon varying versions of how he tripped on a cigarette on his way to Raquel's apartment. Mother confirmed with Kachlon that Aidan had a red mark on his back, but claimed it was not a cigarette burn. Mother stated she immediately took a picture of the red mark and sent it to Father, her attorney, and the case social worker. She denied Aidan had been exposed to cigarettes.

On February 8, 2018 Father told Kachlon he overheard a conversation between Mother and Aidan in which Mother asked Aidan why he would tell someone he got burned with a cigarette.² Father ended the call. After Father told Aidan he needed to tell the truth, Aidan said, "Mommy burned me, it was an accident and she said she was sorry."

² According to Father, when Mother called, Father placed the call on the speaker phone.

A police officer interviewed Aidan at his school on February 8. Aidan told the officer the prior Saturday Mother went to a smoking area at the beach to smoke a cigarette. When Aidan went over to Mother, he heard a loud noise. As he turned around and took a step back, he bumped into Mother's hand, which was holding a lit cigarette. That night Mother told Aidan she was sorry, and took a picture of the mark. The officer "observed a small pinkish circular mark on Aidan's lower back" that "appeared to be healing up and at the time of [his] investigation did not have strong resemblance to a cigarette burn mark."³ The officer also spoke with Aidan's doctor, who was reluctant to say it was a cigarette burn. The doctor reported the injury was mostly healed and the scab had fallen off.

At the February 14, 2018 detention hearing, the juvenile court detained Aidan from Mother, and released him to Father under the Department's supervision. The court granted Mother twice weekly monitored visits for at least two hours each visit.

E. *The First Amended Petition*

On February 28, 2018, dependency investigator Rimi interviewed Aidan concerning an allegation that Mother's friend, Ben B., has sexually abused Aidan. Aidan said Ben was living at Mother's apartment. While Mother was downstairs doing the laundry, Ben wiped Aidan's buttocks even though Aidan did not need help. Aidan stated, "[H]e wiped me hard 4 times, 4 seconds each time." Aidan reported this was the only incident, and Ben did not touch him anywhere else in his private area. Aidan told

³ Kachlon later closed the referral as inconclusive, finding there was insufficient evidence to determine whether Mother had burned Aidan with a cigarette.

Mother, and she yelled at Ben. Aidan also told Rimi that Ben had caused the bruises on his legs by punching him on the legs because he was playing his music too loud. As Aidan was leaving the interview, he told Rimi, “[Y]ou know the burn on my back and bruise on my face, my mom did it.”

On March 12, 2018 the Department filed a first amended petition. The first amended petition included the counts alleged in the petition and a new count d-1, alleging Mother’s roommate Ben B. sexually abused Aidan by touching his buttocks and wiping his private area after Aidan said “no.” Mother knew of the sexual abuse and failed to protect Aidan by allowing Ben to have unlimited access to the child.

F. *Last Minute Information for the Court*

In the March 12, 2018 last minute information for the court, the Department reported that on February 19, 2018 Mother was admitted to an outpatient substance abuse program at Alta Centers. On February 20, she missed her weekly random drug test.

According to the May 25, 2018 last minute information for the court, on April 22, 2018 Mother hit another vehicle while driving, and tried to flee from the scene. She was arrested for driving under the influence and tested positive with an blood alcohol level of 0.335. After the accident, Mother enrolled in a 30-day inpatient substance abuse program. Mother’s driver’s license restricted her to driving only to and from her services and visits with Aidan. Mother was required to have a breathalyzer in her car, and she wore an ankle bracelet that could detect whether she was consuming alcohol. Mother planned to attend Alcoholics Anonymous meetings two to four times a week and individual

counseling. She also planned to resume drug testing with the Department on a regular basis. Mother visited with Aidan every week for an hour each visit.

Aidan's school reported concerns about his behavior. Aidan made fun of other children, did not eat lunch, and bit an afterschool counselor. In addition, Aidan wrote a letter to Melissa indicating he would love her until he or she died, and he was sorry. When Aidan's teacher asked him what he was sorry for, he said he could not tell her. According to Aidan's therapist, Dr. Joan Jutta Lachkar, his behavior was related to his fear of Mother. Dr. Lachkar reported Aidan told her that Mother had lied and never apologized for "burning me with a cigarette and hitting me hard."

Dependency investigator Rimi recommended the juvenile court sustain the first amended petition and terminate jurisdiction with a family law order. Rimi recommended Father have sole physical and legal custody of Aidan, with monitored visitation for Mother. Rimi wrote, "The Department is gravely concerned regarding mother's extensive history with alcohol addiction and her current alcohol abuse. Mother is in denial that she has a chronic problem with her alcohol abuse and she tends to downplay the depth of her past history with alcohol addiction. . . . Although mother was testing and attending [an] outpatient program at Alta Centers, it did not have any impact on her recovery and she had been abusing alcohol on a regular basis while still in the program. Mother was arrested on 04/22/18 for a DUI. . . . Currently, mother is not capable [in] any way and shape to care for Aidan and it is not emotionally healthy for Aidan to be back and forth between parents. This is the [second] time mother lost custody of Aidan. Aidan needs stability in [his]

life to grow up with full potential. Aidan is doing well in father's care and father is capable of caring for Aidan and meet his needs. While mother focuses on her recovery, it is also important to have healthy communication between mother and Aidan through monitored visitation for Aidan's overall wellbeing."

G. *The Jurisdiction and Disposition Hearing*

At the May 30, 2018 jurisdiction and disposition hearing, the juvenile court dismissed counts b-3, c-1, and d-1, at the Department's request. The court amended count b-2 to read, "[Mother] has an unresolved history of substance abuse including alcohol and is a current abuser of alcohol. Mother tested positive for alcohol on February 14, 2018. On or about April 22, 2018 mother was in a car accident and was arrested for Driving under the Influence. On that date the mother tested positive for alcohol and the alcohol level was .335. The child is of such a young age requiring constant care and supervision and mother's substance abuse interferes with providing regular, appropriate care and supervision of the child. Said acts place[] the child at substantial risk of serious physical harm."

The Department requested the court sustain the allegations in counts a-1, b-1, and b-2 of the first amended petition, as amended. The Department also requested the court terminate jurisdiction with a family law order. Mother admitted the allegations in count b-2 relating to her alcohol abuse. But she contested the allegations in counts a-1 and b-1 that she physically abused Aidan. Mother requested the juvenile court maintain jurisdiction over Aidan to ensure he received proper services. Mother also suggested the court order substance abuse counseling, a six-month alcohol program with a six-month

aftercare, parenting classes, individual counseling, and conjoint therapy with Aidan as her case plan.

After oral argument, the juvenile court sustained the allegations in counts a-1 and b-1 of the first amended petition, stating, “On 1/15/18 . . . mother . . . physically abused [Aidan] by striking the child on the child’s face with the mother’s open hand. The mother grabbed the child’s arm resulting in a scratch to the child’s arm. Such physical abuse was excessive and caused the child unreasonable pain and suffering. Such physical abuse of the child by the mother endangers the child’s physical health and safety and places the child at risk of serious physical harm and damage and danger. Further, on or about January 15, 2018 after mother was drinking[,] she inappropriately disciplined the child by striking him in the face leaving a mark.” The court also found true the allegations in amended count b-2.

The juvenile court ordered Aidan removed from Mother’s custody, stating, “Regarding the disposition, the court is going to detain the child from Mother and place with Father, pursuant to the findings and orders in dependency court order 415, as incorporated into today’s minutes.” The court then terminated jurisdiction, but stayed termination pending receipt of the juvenile custody order. The court granted Father sole legal and physical custody of Aidan with monitored visits for Mother. The court also ordered that Ben B. was not to have contact with Aidan.

Mother and Aidan’s counsel objected to termination of jurisdiction, raising a concern that Father would not make Aidan available for visitation with Mother. The juvenile court declined to retain jurisdiction, stating it was closing the case, but the court proceeded to list the substance abuse and other counseling

programs it would have ordered had it not terminated jurisdiction.

H. *The Juvenile Custody Order*

On June 6, 2018 the juvenile court held a hearing on the juvenile custody order (§ 362.4). Mother objected to Father's proposed language in the order that Mother "would have been ordered to complete" specified substance abuse and other counseling programs. The court rejected this argument, stating, "The record is going to reflect that I'm terminating jurisdiction today with sole legal, sole physical, primary to Father and Mother would have been ordered to do the following programs: a 90-day inpatient program, plus a six month aftercare program, a 26[-]week parenting class and individual counseling to address all of these issues, including substance abuse and physical abuse." Mother renewed her objection to the language in the custody order listing the programs the court would have ordered, arguing it was an illegal order.

The juvenile court responded, "Just advising the family court what the court would have ordered so that they can have an understanding of what Mother needs to do to change the circumstance." The court explained, "It's what I would have ordered if I kept this case in this court. And the judges in family court actually cry out for these specificities so that they understand what a change would have to be in family court. They keep complaining all the time because they don't know what they need to do to find a change in circumstance unless it's delineated in our custody orders here in dependency court and that's what they ask for and I'm just giving it to them. So it's over your objection."

The June 14, 2018 juvenile custody order granted Father sole legal and physical custody of Aidan, with Mother having monitored visits for a minimum of two times per week for two hours each visit. The order added, “The monitor shall be approved by the father or a paid professional monitor paid for by the mother.” Under “reasons for supervised visitation,” the order indicated Mother “would have been ordered to complete the following court-ordered programs”: nine-month substance abuse program with random drug testing and six months of aftercare; 90-day inpatient substance abuse program; 26-week parenting classes; and individual counseling to address case issues of substance abuse and physical abuse of Aidan.

DISCUSSION

A. *The Jurisdictional Finding of Physical Abuse Was Supported by Substantial Evidence*

The juvenile court has jurisdiction over a child if the Department establishes by a preponderance of the evidence the allegations made pursuant to section 300 are true. (§ 355, subd. (a); *In re I.J.* (2013) 56 Cal.4th 766, 773.) Section 300, subdivision (a), authorizes a juvenile court to exercise dependency jurisdiction over a child if “[t]he child has suffered, or there is substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent”⁴ “The court need not wait until a child is

⁴ Section 300, subdivision (a), provides further, “For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on

seriously abused or injured to assume jurisdiction and take steps necessary to protect the child.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 165; accord, *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383.)

We review the juvenile court’s jurisdictional findings for substantial evidence in light of the whole record. (*In re I.C.* (2018) 4 Cal.5th 869, 892 [“the evidence supporting the jurisdictional finding must be considered “in the light of the whole record” ‘to determine whether it discloses substantial evidence’”]; *In re R.T.* (2017) 3 Cal.5th 622, 633 [“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them.”].) “The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders.” (*In re D.B.* (2018) 26 Cal.App.5th 320, 328-329; accord, *In re Travis C.* (2017) 13 Cal.App.5th 1219, 1225.)

Mother contends there is insufficient evidence to support the juvenile court’s jurisdictional findings under section 300, subdivision (a) and (b)(1), that she physically abused Aidan.⁵

the child or the child’s siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. For purposes of this subdivision, ‘serious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury.”

⁵ Although not raised by the Department, we recognize the juvenile court’s jurisdictional finding can be affirmed based solely on the uncontested jurisdictional finding of Mother’s alcohol abuse, as alleged in count b-2. (See *In re I.J.*, *supra*, 56 Cal.4th at pp. 773-774 [“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the

Mother further argues while her discipline of Aidan “was certainly in poor judgment,” it did not constitute serious physical abuse within the meaning of section 300, subdivision (a). We conclude substantial evidence supported the jurisdictional finding of physical abuse under section 300, subdivision (a).⁶

Aidan told social worker Kachlon that Mother was mad at him after he did something bad to Mother’s cat. Mother hit him on the face, and left a scratch on his arm when she grabbed it.

dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.”]; accord, *In re Francisco D.* (2014) 230 Cal.App.4th 73, 80.) However, we exercise our discretion to consider Mother’s challenge to the court’s finding of physical abuse under section 300, subdivision (a), because this finding was a basis for the removal order and juvenile custody order. (See *In re Madison S.* (2017) 15 Cal.App.5th 308, 317, fn. 6; *In re D.M.* (2015) 242 Cal.App.4th 634, 639 [“we have discretion to reach the merits of a challenge to any jurisdictional finding when that finding may be prejudicial to the appellant [citation], such as when that finding ‘serves as the basis for dispositional orders that are also challenged on appeal’ or when that finding ‘could potentially impact the current or future dependency proceedings’”].)

⁶ Because we conclude substantial evidence supports the juvenile court’s jurisdictional finding of physical abuse under section 300, subdivision (a), we do not reach whether the evidence also supports the sustained finding of Mother’s failure to protect Aidan based on the same facts under section 300, subdivision (b)(1). (*In re I.J.*, *supra*, 56 Cal.4th at pp. 773-774; *In re Francisco D.*, *supra*, 230 Cal.App.4th at p. 80.)

Kachlon observed a bruise on Aidan's left cheek, scratch marks and red dots on his left forearm, and a bruise on his left elbow. Aidan made a similar statement to the police officers that he was chasing Mother's cat around her apartment, and she told him to stop. When Mother grabbed Aidan, she scratched his right arm with her fingernail. Aidan also said Mother was mad at him and hit him one time on the left side of his face with her hand. Like Kachlon, the investigating police officers observed a red mark on Aidan's left cheek and a small scratch and light-colored bruise on his right forearm.

Mother contends any injuries suffered by Aidan were the result of appropriate discipline, relying on *In re D.M.* (2015) 242 Cal.App.4th 634 and *In re Isabella F.* (2014) 226 Cal.App.4th 128. These cases are distinguishable. In *D.M.*, the Court of Appeal found the mother's spanking of her children on the buttocks with her bare hand or a sandal was reasonable parental discipline that did not constitute serious physical harm under section 300, subdivisions (a), (b), and (j). (*D.M.*, at p. 640.) In *Isabella F.*, the 10-year-old child suffered fingernail injuries on her face and earlobe after the mother attempted to spank the child because of her refusal to attend school. (*Isabella F.*, at pp. 131-132.) The Court of Appeal concluded the child's injuries did not amount to "serious physical harm" under section 300, subdivision (a). (*Isabella F.*, at p. 138.)

Here, there is no evidence Aidan's injuries were the result of reasonable parental discipline. Mother never told the social workers she disciplined Aidan on January 15, 2018, nor did she make this argument at the jurisdictional hearing. Instead, Mother denied the allegations of physical abuse, stating, "I never laid [a] hand on my son" Further, Aidan reported Mother

grabbed him and slapped him on his face because she was mad at what he did to the cat, not to discipline him.

B. *The Juvenile Court Erred in Failing To Make Factual Findings To Support the Removal Order, but the Error Was Harmless*

“At the dispositional hearing, a dependent child may not be taken from the physical custody of the parent under section 361 unless the court finds there is clear and convincing evidence there is or would be a substantial danger to the child’s physical health, safety, protection, or physical or emotional well-being if returned home, and that there are no reasonable means to protect the child’s physical health without removing the child (detriment finding).” (*In re D.B.*, *supra*, 26 Cal.App.5th at p. 328; see § 361, subd. (c)(1).) The juvenile court must determine “whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home” and “shall state the facts on which the decision to remove the minor is based.” (§ 361, subd. (e).)

“In determining whether a child may be safely maintained in the parent’s physical custody, the juvenile court may consider the parent’s past conduct and current circumstances and the parent’s response to the conditions that gave rise to juvenile court intervention.” (*In re D.B.*, *supra*, 26 Cal.App.5th at p. 332; accord, *In re Alexander C.* (2017) 18 Cal.App.5th 438, 451.) “A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of potential detriment to the child if he or she remains with the parent. [Citation.] “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the

statute is on averting harm to the child.”” (*Alexzander C.*, at p. 451; accord, *D.B.*, at p. 328.) We review the entire record to determine whether the removal order is supported by substantial evidence. (*Alexzander C.*, at p. 451; *D.B.*, at pp. 328-329 [“The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders.”].)

At the May 30, 2018 dispositional hearing, the juvenile court removed Aidan from Mother’s custody based on the findings in dependency court order 415, as incorporated into the minute order. Dependency court order 415, as set forth in the minute order, recites the legal conclusions required under section 361, subdivisions (c)(1) and (e), but does not state the facts that support removal. Thus, the juvenile court erred by failing to state the facts on which its removal order was based. (§ 361, subd. (e).)⁷

However, the failure of the juvenile court to state its factual findings was harmless error because it is not reasonably probable

⁷ Mother contends dependency court order 415 violates the separation of powers doctrine by failing to comply with the legislative requirement in section 361 that the juvenile court make express findings for removal. However, Mother cites no authority in support of her argument. “Issues not supported by citation to legal authority are subject to forfeiture.” (*People ex rel. Alzayat v. Hebb* (2017) 18 Cal.App.5th 801, 821, fn. 10; accord, *People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 363 [“If a party’s briefs do not provide legal argument and citation to authority on each point raised, “the court may treat it as waived, and pass it without consideration.””].) Although we conclude the juvenile court’s failure to state the facts for removal violates section 361, subdivision (e), it does not constitute a constitutional violation.

had the court expressly made findings under section 361, subdivision (e), the findings would have been in favor of continued parental custody. (See *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1137 [“Although the court did not state a factual basis for its removal order, any error is harmless because it is not reasonably probable such findings, if made, would have been in favor of continued parental custody.”], disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218 [“[C]ases involving a court’s obligation to make findings regarding a minor’s change of custody or commitment have held the failure to do so will be deemed harmless where ‘it is not reasonably probable such finding, if made, would have been in favor of continued parental custody.’”].)

Mother has an unresolved history of alcohol abuse and, as a result, previously lost custody of Aidan when he was one year old. She gained joint custody of Aidan after receiving treatment for her alcohol problem. However, Father and Aidan’s teacher reported Mother started drinking alcohol again; and, as discussed, on January 15, 2018 Mother physically abused Aidan, causing a red bruise on his cheek and a scratch mark on his left arm. After Aidan was detained from Mother, she tested positive for alcohol on February 14, 2018. She then started a substance abuse outpatient program on February 19, 2018. However, Mother continued to drink, and she was arrested for driving under the influence of alcohol on April 22 after she hit another vehicle. On that date, Mother tested positive with a blood alcohol

level of 0.335.⁸ Given Mother's unresolved alcohol abuse and physical abuse of Aidan, it is not reasonably probable had the dependency court made the requisite factual findings for removal, the findings would have supported Mother's continued custody of Aidan.

Mother also contends the juvenile court and the Department failed to consider meaningful alternatives to removal in light of her completion of a 30-day inpatient program and the requirements she wear an ankle monitor to monitor her alcohol use and have a breathalyzer in her car. But Mother forfeited this issue by failing to present to the juvenile court any alternatives to removal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293; *In re A.E.* (2008) 168 Cal.App.4th 1, 5.) Even had Mother not forfeited this contention, Mother has failed on appeal to present any alternatives to removal. The ankle monitor and breathalyzer do not ensure Mother's sobriety while Aidan is in her custody. Rather, the measures only notify law enforcement after Mother has consumed alcohol and prevent her from driving while drunk. Given Mother's severe alcohol problem, there was no evidence of a reasonable alternative to removal to ensure Aidan's safety while in Mother's care. Accordingly, it is not reasonably probable had the juvenile court made factual findings in support of its dispositional order removing Aidan from Mother's custody, the findings would have been in favor of continued parental custody. (*In re Diamond H.*, *supra*, 82 Cal.App.4th at p. 1137; *In re Jason L.*, *supra*, 222 Cal.App.3d at p. 1218.)

⁸ Under Vehicle Code section 23152, subdivision (b), "[i]t is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle."

C. *The Juvenile Court Did Not Abuse Its Discretion by Terminating Jurisdiction at the Disposition Hearing*

At the disposition hearing, the juvenile court has “discretion to terminate dependency jurisdiction when the child is in parental custody and no protective issue remains.” (*In re Destiny D.* (2017) 15 Cal.App.5th 197, 207.) “If no substantial risk of harm exists once those restrictions [on the offending parent] are in place, and ongoing supervision is unnecessary, termination of jurisdiction is appropriate. [Citation.] To hold otherwise and conclude that court supervision must be continued, even absent a continuing risk of harm, simply because the protective and custody orders that eliminated the risk were made at the conclusion of a disposition hearing, rather than a subsequent review hearing, would be wholly at odds with the fundamental goal of the dependency system to return the child to his or her custodial parent and terminate dependency jurisdiction as soon as circumstances permit.” (*Id.* at p. 208.) We review for an abuse of the discretion the juvenile court’s termination of jurisdiction at the disposition hearing. (*Id.* at p. 213 [finding juvenile court’s termination of jurisdiction at disposition hearing and placement of child with mother with monitored visits for father was not “arbitrary, capricious or patently absurd”].)

Mother contends the juvenile court’s termination of jurisdiction was an abuse of discretion because of Aidan’s “obsession” with Melissa, based on a note Aidan wrote professing his love for her and saying he was sorry.⁹ But Aidan’s therapist,

⁹ Mother also asserts Aidan was spoiled by Melissa because Aidan reported Melissa never said “no” to him and brought him gifts. But Mother cites to no authority, nor could she, for her

Dr. Lachkar, did not find the note to Melissa was inappropriate, explaining, “What triggered Aidan’s note was his apologizing to Melissa for his misbehavior in not wanting to go to Karate. That evening he was remorseful and asked Melissa if she still loves him. Her response was ‘I’ll love you ‘til I die!’ It was within this context that he wrote the letter ‘mirroring’ Melissa’s words.”

Mother also argues the juvenile court should not have terminated jurisdiction because there was a risk Father would not allow Mother to visit Aidan. But neither Mother nor Aidan’s counsel presented any evidence Father would prevent Mother’s visits. Further, the juvenile custody order provided for twice weekly monitored visitation by Mother for two hours each visit. If Father interferes with Mother’s monitored visitation rights, she can enforce the visitation order in family court. In light of the juvenile court’s placement of Aidan with a custodial parent, with monitored visitation to ensure there was no continuing risk of harm to Aidan, the juvenile court did not abuse its discretion in terminating jurisdiction at the disposition hearing. (*In re Destiny D.*, *supra*, 15 Cal.App.5th at pp. 207, 213.)

D. *The Juvenile Court Did Not Exceed Its Authority in Listing the Services It Would Have Required for Mother Had It Not Terminated Jurisdiction*

Mother contends the juvenile court acted in excess of its authority when it included an “advisory case plan” for Mother in the juvenile custody order by stating had it not terminated jurisdiction, Mother “would have been ordered to complete” a 90-day inpatient substance abuse treatment program, a nine-month

contention that spoiling a child is a basis for continuing dependency jurisdiction.

substance abuse program with random drug and alcohol testing and a six-month aftercare program, 26 weeks of parenting classes, and individual counseling to address substance abuse and physical abuse of Aidan. This contention lacks merit.¹⁰

When the juvenile court terminates jurisdiction, “section 362.4 authorizes it to make custody and visitation orders that will be transferred to an existing family court file and remain in effect until modified or terminated by the superior court.” (*In re Chantal S.* (1996) 13 Cal.4th 196, 203; accord, *In re J.T.* (2014) 228 Cal.App.4th 953, 960.) The juvenile court has authority to require a parent to participate in counseling as a condition for visitation as part of the final juvenile custody order. (*Chantal S.*, at p. 204.) However, the juvenile court has no authority to condition the family court’s modification of the juvenile custody order upon a parent’s completion of services. (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1456.) “Under section 302, subdivision (d), the decision to modify an exit order was, and is, within the province of the family court, and then only upon a finding of

¹⁰ Although we conclude the juvenile court did not err in providing its views on the programs Mother should complete, the court should have included its advisory statements in paragraph 13 of the Custody Order—Juvenile—Final Judgment (Judicial Council Forms, form JV-200), which provides for “[o]ther findings and orders (including circumstances underlying any limits on custody or visitation at the time of the order.” (Boldface & italics omitted.) The form the juvenile court used, entitled Reasons for No or Supervised Visitation—Juvenile (Judicial Council Forms, form JV-206), is intended to be used as an attachment to the JV-200 form to explain why the juvenile court ordered no visitation or supervised visitation. But the juvenile court did not actually impose the limitations set forth in form JV-206.

‘significant change of circumstances’ and that the modification is in ‘the best interests of the child.’”¹¹ (*Cole Y.*, at p. 1456; accord, *Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150, 1163.)

Here, the juvenile court did not condition the family court’s modification of the juvenile custody order on Mother’s completion of specified services to address her alcohol abuse and physical abuse of Aidan. Rather, the juvenile court offered guidance to the family court as to the juvenile court’s view of the services Mother should complete to show “a significant change of circumstances.” The family court is not bound by the juvenile court’s statement of the services it would have required. Indeed, it is up to the family court to determine under section 302, subdivision (d), what constitutes “a significant change of circumstances.”¹²

DISPOSITION

We affirm the jurisdictional findings and dispositional orders.

¹¹ A custody and visitation order entered pursuant to section 362.4 is commonly referred to as an exit order. (*In re Cole Y.*, *supra*, 233 Cal.App.4th at p. 1455.)

¹² The juvenile custody order states Mother “would have been ordered to complete . . . [¶] . . . [¶] [a] nine[-]month substance abuse program with random drug testing and six months of aftercare,” following a 90-day inpatient program. Mother argues the order should be modified to reflect the juvenile court’s oral statement it would have ordered only six months of aftercare following a 90-day inpatient program, without the requirement that Mother complete a nine-month substance abuse program. Because the description of services in the juvenile custody order is not binding on the family court, modification is not warranted.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.